



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-170751

September 24, 1973

Techner, Rubin, Shapiro, Silverstein  
& Glass  
Seventh Floor 1201 Chestnut Street  
Philadelphia, Pennsylvania 19107

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Attention: Bernard L. Shapiro, Esq.

Gentlemen:

This is in reply to your letter of June 1, 1973, and prior correspondence protesting on behalf of Price Industries, Inc. (Price), against the award of a contract to any other firm under IFB DSA 400-73-B-7851, issued by the Defense Supply Agency (DSA).

The subject IFB, issued on April 24, 1973, solicited bids for two Diesel/Electric Generator sets on both an f.o.b. origin and an f.o.b. destination basis. Three bids were received in response to the solicitation with the IN-TROL Division of ASECO Corp. (In-Trol) being the low bidder, Holt Bros. (Holt) second and Price third.

The protest of Price is based on the allegation that both the bids of In-Trol and Holt are nonresponsive and therefore award should be made to Price as the low responsive and responsible bidder.

A copy of the report of DSA responsive to your protest was furnished to you by DSA for comment. As our Office has not received any further correspondence from you within the time limits imposed by our Office, we will proceed to decide the protest on the basis of the present record.

As regards the bid submitted by In-Trol, you contend that the bid is nonresponsive because:

- (1) While the IFB requested bids on two generators, In-Trol inserted the same price in both the unit price column and the total amount column;
- (2) Unnecessary descriptive literature was submitted with the bid; and

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(3) In-Trol failed to certify on Paragraph B17 (Affirmative Action Program) and on Paragraph B23 (Jewel Bearing Certificate).

The first basis of your protest against In-Trol is grounded on the fact that since the company put the same price for the unit price and the total amount bid for f.o.b. origin, it is unclear whether it was bidding on one or two generators.

Paragraph 2(c) of Standard Form 33A, which was incorporated by reference into the IFB, reads as follows:

"Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake."

In-Trol did not change the number of units offered and also verified its unit price to the contracting officer. In this type of situation, we believe the reasonable interpretation of the bid should be that the unit price controls and the extended price may be corrected to conform to the actual total of the unit price. B-161147, April 4, 1967. In any event, it appears, as reported, that In-Trol's bid price f.o.b. destination (\$32,700 each--extended price, \$65,400), about which there is no question, is lower than its evaluated f.o.b. origin bid, and consequently if award is to be made to In-Trol it will be made on an f.o.b. destination basis.

Secondly, you state that the specifications in the IFB were sufficient and that In-Trol attempted to take exception to these specifications by submitting descriptive literature with its bid, even though In-Trol wrote on the literature:

"GENERATOR SET AND ACCESSORIES AND CONTROLS TO BE DESIGNED AND EQUIPPED PER CUSTOMER'S SPEC. DSA-400-73-B-7851 NO EXCEPTIONS TAKEN"

The contracting officer forwarded the bid of In-Trol to the ordering activity, U. S. Naval Shipyard, Portsmouth, Virginia, to determine if there were any deviations due to the submission of the descriptive literature. The contracting officer was advised that there were no

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deviations. Our Office has held that where descriptive literature is voluntarily furnished and that literature does not deviate or qualify the bid, the mere submission of such literature does not render the bid nonresponsive. B-169057, April 23, 1970; 49 Comp. Gen. 351 (1970). From our review of the record we are unable to conclude that the brochure attached to In-Trol's bid deviated from the advertised specifications.

Thirdly, you believe the failure of In-Trol to complete the Jewel Bearing Certification and the Affirmative Action Program clause would also render the bid of In-Trol nonresponsive.

The Affirmative Action Program only applies to contractors with more than 50 employees and whose offer is more than \$50,000. While the bid price of In-Trol exceeded \$50,000, In-Trol stated in paragraph 6 of Standard Form 33 that it employed less than 50 employees and the precaward survey conducted on the firm shows that it employs 43 persons. Therefore, the completion of clause B17 was not a requirement for the bid of In-Trol to be responsive.

As regards the Jewel Bearing Certification, which In-Trol failed to complete, your attention is directed to paragraph 1-315.2(c)(3) of the Armed Services Procurement Regulation (ASPR; Interim Revision dated June 2, 1972) which reads, in part, as follows:

" \* \* \* Failure to submit this certification with a bid or proposal shall not render such bid or proposal nonresponsive, but the certification must be obtained from the prospective contractor prior to award."

In the report to our Office of June 29, 1973, the contracting officer stated that inquiry was made of In-Trol after bid opening and that In-Trol advised that the jewel bearings would be incorporated in the item being procured.

For the foregoing reasons, the bid of In-Trol may be considered for award of the instant contract.

Concerning the bid of Holt, you allege that such bid is nonresponsive for the following reasons:

(1) Holt failed to complete paragraphs B17 and B23 in the solicitation, as did In-Trol;

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(2) No unit price was shown by Holt for Item 0002 (Instructions and Manuals), therefore raising doubts as to whether it is included in the base price or was unintentionally left blank;

(3) Holt did not insert a price for f.o.b. destination, and

(4) Failed to properly complete the delivery schedule.

Your argument as to Holt's failure to certify the Jewel Bearing Certificate was answered previously in regard to the In-Trol bid.

While Holt employs over 50 persons and its bid exceeded the \$50,000 limit of paragraph 317, it did not complete the Affirmative Action Program clause in the IFB. However, this failure does not render the bid nonresponsive and the information may be obtained prior to the award of the contract. ASPR 2-405(v1); H-177001(1), January 9, 1973, and B-174307, April 10, 1972.

Next, you contend that Holt did not insert a price for the instruction manuals. However, an examination of Holt's bid shows that they entered the notation "No charge" opposite item 0002.

The next reason you advance for the nonresponsiveness of Holt's bid is that Holt only submitted a price for f.o.b. origin and none for f.o.b. destination. A review of the IFB shows that paragraph 2 of clause D4 reads as follows:

"Bids/Offer are invited on the basis of both FOB Origin and Destination for items 0001. The Government will award on such basis as the Contracting Officer determines to be most advantageous to the Government. A Bid/Offer on the basis of FOB Origin only or FOB Destination only is acceptable, but will be evaluated only on the basis submitted."

As this clause allowed bids on either basis, the bid of Holt is responsive.

Finally, you assert that Holt did not complete the delivery schedule properly and that this failure should render its bid nonresponsive. The delivery schedule contained the Government's desired delivery dates with space allowed for the bidder to offer his own schedule as long as it is within the Government's required delivery schedule. The Government delivery schedule required delivery on an f.o.b. origin basis by January 15, 1974, and on an f.o.b. destination basis by January 30, 1974.

Holt did not complete the portion of the delivery schedule concerning "Item No." or "Quantity" nor did it give a date for delivery of the technical manuals called for under Item 0002.

We believe a reading of the delivery schedule as a whole shows that Holt intended to be bound by the required delivery schedule of the Government. The same dates were inserted for f.o.b. origin and destination as those required and if an exception was to have been intended, other dates would have been used. Regarding the manuals, in the Contract Data Requirements List, it is stated that the manuals will be delivered concurrent with the end product or hardware.

Therefore, there is no basis to determine that the bids of In-Trol and Holt were nonresponsive, and accordingly your protest is denied.

Sincerely yours,

Paul G. Debling

For the

Comptroller General  
of the United States